

STATE ARBITRATION BOARD

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Vero Beach, FL. 32968**

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May 18, 2003

Bill Albaugh
Highway Operations
Florida Department of Transportation
605 Suwannee Street MS 31
Tallahassee, FL. 32399-5200

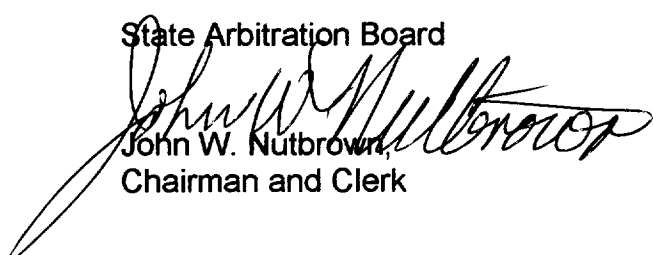
Re Arbitration Order 1 / 2003
DOT Fin Project No. 219850-1-52-01
Leon County Florida

Dear Bill:

Find enclosed Arbitration Order 1 / 2003 for the above captioned project. A copy of the transcript is enclosed, and copies of the Contractors submittal and the Department rebuttal are being kept by Freddie Simmons for your use.

Sincerely;

State Arbitration Board


John W. Nutbrown,
Chairman and Clerk

Cc: All Board Members

For your review

DAS DAB

KB KB

After review, give it to
Marry so that she can
scan this in....



STATE ARBITRATION BOARD

Order No. 1-2003

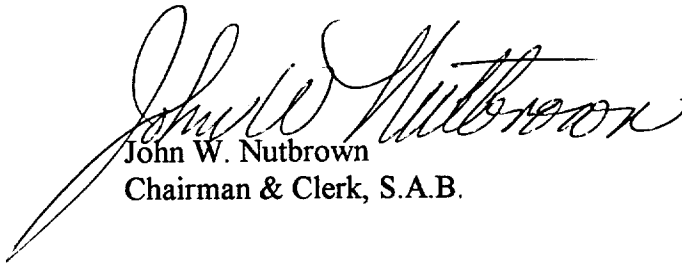
S.A.B. CLERK

MAY 16 2003

FILED

/// NOTICE ///

In the case of Mitchell Brothers, Incorporated versus the Florida Department of Transportation on Financial Project No. 219850-1-52-01 in Leon County, Florida, both parties are advised that the State Arbitration Board Order 1-2003 has been properly filed with The Clerk of the State Arbitration Board on May 9, 2003



John W. Nutbrown
Chairman & Clerk, S.A.B.

Copy of Order & Transcript to:

Bill Albaugh, Highway Operations

Eddie M. Mitchell, Jr., Mitchell Brothers, Inc.

STATE ARBITRATION BOARD

Order No. 1-2003

RE: Request for Arbitration
Mitchell Brothers, Inc.
State Financial Project No. 219850-1-52-01 in
Leon County, Florida

The following members of the State Arbitration Board participated:

John W. Nutbrown, Chairman
Freddie Simmons, Board Member
John Norton, Board Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 9:00 AM, Friday, January 24, 2003

The Contractor, Mitchell Brothers, Incorporated, presented a written request for arbitration of its claim in the total amount of \$204,997.18. The claim arises out of 5 different areas of contention. The Board will outline and address each area of the claim package separately. The Department of Transportation presented a written rebuttal and summary of position. The Board has considered the written submissions and the testimony and evidence presented at the hearing on January 24, 2003 and enters this Order Number 1-2003

ORDER

The Board is unanimous in this decision.

The project involves the resurfacing, retaining wall, concrete sidewalk, Street-Print installation and other incidental items of construction on S.R.-366 (Pensacola Street) from Monroe Street to Martin Luther King Boulevard in Leon County, Florida. The claim package as presented to the Board is broken out in a number of sections. The Board will address each separately.

Area 1

Original contract time was 80 calendar days. On February 11, 2000 Mitchell Brothers, Incorporated (MBI) requested revised drawing relating to the installation of the concrete sidewalk and the impact of existing large trees. On March 3, 2000 the Contractor received further plan changes relating to concrete sidewalk, concrete retaining walls as well as other items discussed in the meeting on February 11, 2000. Contractors claim submittal stated the project could not be completed on time as almost 30 days of delay had been encountered by the revisions.

After thorough review a deliberation the Board finds the Contractor is due an additional 26 calendar days and directs the Department to compensate the Contractor \$39,534.30.

Area 2

On March 2, 2000 (MBI) was directed to install temporary sidewalk in order to facilitate pedestrian traffic during the annual Legislative Session. This same sidewalk was removed on

STATE ARBITRATION BOARD

Order No. 1-2003

May 10, 2000. The Contractor was issued a Unilateral Agreement to cover the out of pocket costs but claims he was not given any additional time.

The Board finds the Contractor is due compensation for the 2 calendar days involved in this item and directs the Department to compensate the Contractor \$3,041.10.

Area 3

Project specification for the project called for installation of the Street-Print in a manner which had been discontinued and changed by the manufacturer of the system. The new installation system required reheating the asphaltic concrete surface, placing the templates and tamping the pattern into the surface with a plate tamp. This process took 85 calendar days from the milling of existing surface to the completion of the textured surface some 5 calendar days longer than was allowed for the entire project.

During the hearing testimony by the Department representative stated the finish product as installed by the Contractor was a very good looking job. The Board heard testimony the installation method had been changed due to the fact the templates had a tendency to move or slip when the roller moved onto the template and allowing the mat to cool prior to placing the template made it difficult to get a good imprint.

Testimony given by the Contractor stated the method of installation was changed to installing the templates after the original mat had been placed and completed. The asphalt surface was reheated using a surface heater, the template placed and a plate tamp used to transfer the pattern to the surface. The original surface was placed in 2 calendar days and an excellent riding surface was achieved, however the Street-Print installation took from May 30, 2000 to August 12, 2000 and required closing down the entire intersection which was only allowed on weekends. The Street-Print installation required a series of surface coatings each having to cure properly before the next could be applied.

The Board finds the Contractor is due compensation for 75 days involved in the Street-Print installation and directs the Department to compensate the Contractor \$114,041.25.

Area 4

The Contractor has requested additional contract time due to the fact the model of decorative bench was no longer manufactured and a substitution had to be submitted. The Contractor did not order the original benches until February 25, 2000 and received notification from the manufacturer on March 3, 2000 of the unavailability. The substitution was granted by the Department on April 5, 2000 and the benches were delivered and installed on September 25, 2000.

The Board in review of this item found the contract contained a procurement period prior to the start of contract time. The Contractor entered into the contract of September 19, 1999 and contract time started January 15, 2000. Had the Contractor ordered the benches during this procurement period no delay would have been encountered.

The Board has not included this time and makes no award in this matter.

STATE ARBITRATION BOARD

Order No. 1-2003

Area 5

The Contractor requested contract time postponed until after the Martin Luther King Holiday, a period of three days which the Department refused.

The Board has not included this time and makes no award in this matter.

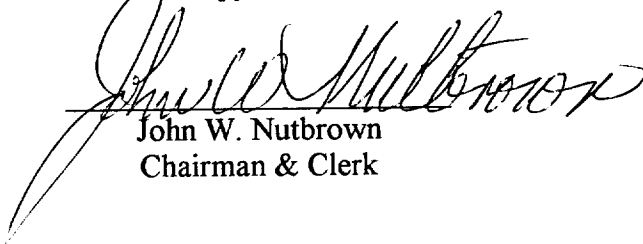
The Department is ordered to compensate the Contractor in the amount of \$195,145.00 which includes interest at the statutory rate since September 25, 2000.

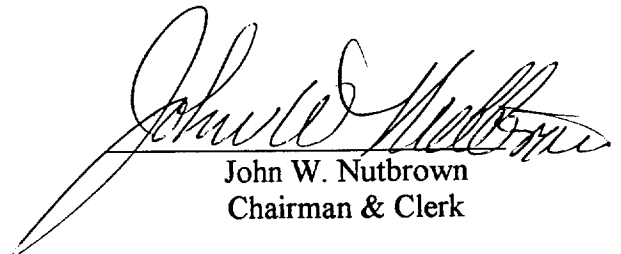
The Department shall reimburse the State Arbitration Board \$348.50 for court reporting costs.

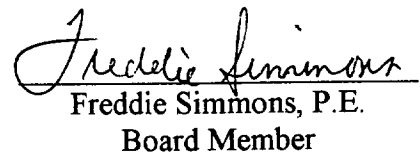
Lake Worth, Florida

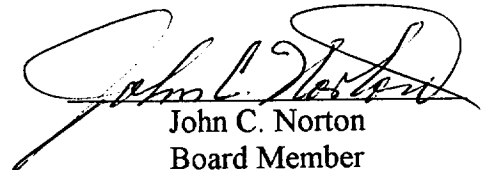
Dated April 27, 2003

Certified copy:


John W. Nutbrown
Chairman & Clerk


John W. Nutbrown
Chairman & Clerk


Freddie Simmons, P.E.
Board Member


John C. Norton
Board Member

STATE ARBITRATION BOARD
STATE OF FLORIDA

MITCHELL BROTHERS, INC.,

- and -

DEPARTMENT OF TRANSPORTATION

PROJECT NUMBER 219850-1-52-01

LOCATION: Leon County, Florida

COPY

PROCEEDINGS: Arbitration in the Above Matter

DATE: Friday, January 24, 2003

PLACE: Florida Transportation Center
1007 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 9:11 a.m.
Concluded at 10:28 a.m.

REPORTED BY: Mindy Martin, RPR
Notary Public in and for
the State of Florida at Large

Wilkinson & Associates
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida 32317

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. John W. Nutbrown, Chairman
 Mr. John C. Norton
 Mr. Freddie Simmons

ON BEHALF OF THE CONTRACTOR:

Mr. Timothy R. Avitable
 Ms. Kathy Hethcox
 Mr. Eddie M. Mitchell, Jr.

ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Archie Montgomery
 Mr. Tim Shafer

ALSO PRESENT:

Mr. Bob Gwynn

I N D E X

EXHIBITS

Exhibit No. 1 in Evidence	3
Exhibit No. 2 in Evidence	6
Exhibit No. 3 in Evidence	6

CERTIFICATE OF REPORTER	54
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P R O C E E D I N G S

MR. NUTBROWN: This is a hearing of the State Arbitration Board, established in accordance with Section 337.185 of the Florida Statutes. Mr. Freddie Simmons was appointed as a member of the board by the Secretary of the Department of Transportation. Mr. John Norton was elected by the construction companies under contract to the Department of Transportation. These two members chose me, John Nutbrown, to serve as the third member of the board and as chairman. Our terms expire June 30th, 2003.

Will each person who will make oral presentations during the hearing please raise right your right hand and be sworn in.

(Whereupon, the witnesses were duly sworn.)

MR. NUTBROWN: The request for arbitration of a claim submitted by the claimant, including all attachments thereto, and the administrative documents preceding this hearing are hereby introduced as Exhibit 1. That's both of these notebooks.

(Whereupon, Exhibit No. 1 was received in evidence.)

MR. NUTBROWN: Do either of the parties have any other information that you wish to put into the record as an exhibit at this time?

MR. AVITABLE: I have a couple letters from a StreetPrint representative I'd like to --

1 MR. NUTBROWN: Do you have copies for everybody?

2 MR. AVITABLE: No, I don't. So I just --

3 MR. NUTBROWN: Jack, you want to run those upstairs
4 and make copies of those and I'll go ahead.

5 We will identify each additional exhibit and assign a
6 number for the record and offer the parties time to examine
7 these documents, once he gets back with copies, submitted
8 by the other party.

9 During the hearing the parties may offer such
10 evidence and testimony as is pertinent and material to the
11 dispute being considered by the board and shall produce
12 such additional evidence as the board may deem necessary to
13 an understanding of the matter before it.

14 The board shall be the sole judge of the relevance
15 and the materiality of the evidence ordered. Parties are
16 instructed to assure that they receive properly identified
17 copies of each exhibit used in this proceeding. You should
18 retain these exhibits. The board will send the parties a
19 copy of the court reporter's transcript, along with our
20 order, but we will not furnish copies of these exhibits.

21 As is typical in arbitration proceedings, this
22 hearing will be conducted in a very informal manner. The
23 board is not required to apply a legalistic approach or
24 strictly apply the Rules of Evidence used in civil court
25 proceedings. We are primarily looking for information in

1 regard to the facts and the contract provisions that apply
2 to the case. The order of the proceeding will be for the
3 claimant to present their claim and then for the
4 respondent's rebuttal.

5 Either party may interrupt to bring out pertinent
6 information. And if you do that, I would prefer that you
7 ask the chairman, and then I'll recognize you so we can
8 keep it in an orderly form.

9 In addition to that, this young lady up here has only
10 got ten fingers, I think, and a recorder. And she can only
11 hear one person at a time. So I would appreciate, if you
12 have a point, raise your hand, I'll recognize you, and
13 we'll get it in, but don't try to talk over somebody else.
14 And I would appreciate it if you didn't talk across the
15 table.

16 I would take it that there are no attorneys here.
17 Okay. And with that, once Mr. Norton gets back and we get
18 these copies distributed, we'll go ahead and get started.
19 (Pause)

20 MR. NUTBROWN: Exhibit Number 2 will be for the
21 package presented by Carolina Paving Concepts. And Exhibit
22 3 will be a fax package, I think they're both -- no,
23 they're not -- a fax package from StreetPrint dated January
24 20th. And the first package is dated January 6th. That
25 will be Exhibits 2 and 3.

1 (Whereupon, Exhibits No. 2 and No. 3 were received in
2 evidence.)

3 (Pause)

4 MR. NUTBROWN: Mr. Shafer, have you had a chance to
5 examine the material?

6 MR. SHAFER: Yes, sir.

7 MR. NUTBROWN: With that, we'll go ahead and open the
8 hearing. And the claimant, being Mitchell Brothers, Inc.,
9 we'll let you go ahead and present your portion of it. And
10 then once that is done and we've asked questions, we'll let
11 the Department present theirs.

12 MR. AVITABLE: Go ahead and start?

13 MR. NUTBROWN: Go ahead.

14 MR. AVITABLE: Okay. I guess the job basically that
15 we're talking about, everybody knows, was called Pensacola
16 Beautification. And it just really involved landscaping,
17 side walls, retaining walls, that type work, and a
18 StreetPrint application over the asphalt, which was part of
19 the, I guess part of the reason why we're here.

20 The specifications and everything said that the
21 StreetPrint could be, the way the plans showed it, it was
22 being installed right behind the paving process. And I
23 think we submitted everything showing that we milled the
24 project and did the paving in a weekend, which time-wise,
25 according to the specifications, the Streetprint, which we

1 subcontracted out, should have been able to be done right
2 behind the paving.

3 And our contention, one of our contentions is that
4 that process, just whenever they allotted time for this
5 project, that's kind of the way they figured the time. And
6 then the way the StreetPrint is now done, that's not the
7 way they prefer.

8 You know, Mr. Gwynn, he's here, our subcontractor, he
9 can you tell you, is that that's not the way they recommend
10 it anymore. So originally when they might have could have
11 done the StreetPrint in two days, it ended up being a
12 different type process, which they now recommend, as these
13 letters show, that something that will be a better
14 product. And I think everybody is happy with the way the
15 job came out. It's just the additional time it took to do
16 some of the work.

17 Now, the other items that we had, you know, different
18 delays and so forth, I think a lot of that, you know, you
19 could almost say it's resolved. It's really not -- it's
20 just this one part of it took a lot of extra time. And I
21 don't think we, you know, we really didn't get any time for
22 it, and that's kind of the holdup or the problem.

23 There was another area, the benches, where we had a
24 lengthy time process on acquiring some benches that were
25 misdirected in the plans. They stated one model and it

1 ended up being another model that was made available or
2 substituted. And I think that was a real lengthy process.

3 And we asked for a certain amount of time on that.
4 And the time that we asked for, they were, I think, the
5 Department was willing to give us that. But now the
6 problem is that, you know, since we weren't able to get any
7 time that we asked for on the StreetPrint, you know, there
8 was possibly more delays in that area than what we asked
9 for. And it just kind of depends on how they want to look
10 at it.

11 I guess the letters, mainly the main thing is just
12 these letters show that the StreetPrint is really a process
13 now, it shows in the letters, that the new, people that are
14 newly licensed now for this process, they don't even, they
15 require them to buy a reheater, which that in itself shows
16 you how much they think of coming back later and reheating
17 the asphalt and doing it at a later time.

18 The work mainly was done, and I'll let Bob talk for a
19 second, but mainly we started out doing the work during the
20 days. But the time during the week only allowed for like 9
21 or 9:30 in the morning to 4:00 in the afternoon.

22 And Bob will tell you he wasn't able to, there was no
23 way he could even paint it and have it dry and not have
24 traffic track it up during the week. So his work, most of
25 the painting was done on the weekends. And we had off-duty

1 out there. And we blocked the sections off. And
2 he painted. And, I mean, it all went good. It was just
3 something that, it couldn't all be done in a weekend,
4 painting and so forth, like the plans seemed to indicate.

5 And Bob, he works with Peavy and Son. You know, they
6 did a real good job. And I don't think there's any
7 question about, you know, the product. I think it's just a
8 matter of how long it took.

9 We basically got, from the first day we milled to the
10 last day they got done was 85 days. And the whole time
11 originally allotted for the job was 80 days. And they
12 followed -- Bob, if I'm not mistaken, you all are
13 up-to-date on the, you all are doing the most recommended
14 methods of doing that type work, right?

15 MR. GWYNN: (Nodding head affirmatively)

16 MR. AVITABLE: So, I mean, they're doing it the way.
17 I've got in my notes they missed one weekend for a
18 funeral. Somebody, one of their, someone on their crew had
19 a funeral. And then also one weekend, Claude Brown, who
20 was the project manager at the time, we didn't work one
21 weekend due to FSU graduation. That was on August 5th. So
22 that weekend basically -- and Claude told me as far as
23 times goes, if time became an issue on this project, that
24 he would give me that week for not working. Of course he's
25 not here now so that's only what I'm saying.

1 So we took off one weekend for the FSU graduation,
2 which was at the Civic Center, which was right next to
3 where we were working. And we didn't want to block the
4 intersections off with that going on. And the other
5 weekend we missed due to their, at their request. That
6 didn't have anything to do with the Department or traffic.
7 So it was one of each. But the whole time consumed 85 days
8 from start to finish compared to two days, as they say,
9 behind the paver.

10 MR. NUTBROWN: I have a question. Did this contract
11 have a procurement period prior to the starting date of the
12 contract time?

13 MR. AVITABLE: Uh-huh.

14 MR. NUTBROWN: How long was that period?

15 MR. AVITABLE: Sixty days.

16 MR. NUTBROWN: Sixty days?

17 MR. AVITABLE: Right. To the best of my knowledge,
18 that's what I remember, 60 days.

19 MR. NUTBROWN: Tom, can you tell us, was it 60 or 90
20 days --

21 MR. SHAFER: I thought it was the 90 days.

22 MR. NUTBROWN: -- the procurement period?

23 MR. MONTGOMERY: Right, printed on the contract.

24 MR. NUTBROWN: What was the total square footage of
25 the patterned area?

1 MR. AVITABLE: I don't remember. Bob, do you
2 remember offhand?

3 MR. GWYNN: I'd be guessing.

4 MR. AVITABLE: I think it was roughly 2,000 square
5 yards, close, but I can't remember exactly.

6 MR. SIMMONS: The job was like three blocks, wasn't
7 it, or something like that?

8 MR. AVITABLE: It was five intersections.

9 MR. SIMMONS: Five intersections? Okay. Four
10 blocks.

11 MR. SHAFER: I'm looking to see if there's a quantity
12 sheet that shows it.

13 MR. AVITABLE: I think the payout for the StreetPrint
14 was in the asphalt in the friction course. I don't know if
15 they give quantity.

16 MR. MITCHELL: Our situation on that was, basically,
17 when the job was bid, it was understood that you could, you
18 know, feasibly mill it and pave it and put the StreetPrint
19 behind it in approximately two days. That was the way we
20 considered it.

21 MR. NUTBROWN: The only place that the StreetPrint
22 was put in was in the intersections; is that correct?

23 MR. MITCHELL: Right, five intersections, the whole
24 intersection.

25 MR. NUTBROWN: Just a big circle.

1 MR. MITCHELL: Yeah. So anyway, that's basically the
2 way we looked at the job. And when it come time to do the
3 work, once we started, you know, getting quotes and doing
4 contracts on it, that's when all this came up about you're
5 not going to be able to -- or we're not going to be able to
6 print this behind you, you know, because you're going to
7 pave it much faster than we're going to be able to print
8 it. That's what, you know, the subs were saying, the
9 people quoting the print.

10 So in actuality, what happened, when we went out
11 there to do the work, we did mill it and we did pave it in
12 two days. We did what we were to do in two days. But
13 physically, the StreetPrint couldn't be put on in two
14 days. And in order to do it and even do a -- I mean, once
15 we got out there and seen how this was done, it would
16 almost, to me, it would almost have been impossible for
17 them to have done that behind us, milling and paving it.

18 MR. AVITABLE: No way.

19 MR. MITCHELL: It just wouldn't have been possible, I
20 don't think. So therefore --

21 MR. NORTON: Were you able to close these
22 intersections down completely, or did you have to do them
23 in halves or fourths?

24 MR. MITCHELL: The only time they'd let us close them
25 down was on weekends. Therefore we couldn't work -- we

1 could only work, they could only do the StreetPrint on
2 weekends. So, you know, they'd do it on a weekend. And
3 then they'd have to wait until the next weekend to do some
4 more. And it was a slow process.

5 And not only did they have to put the print in, they
6 had to put several layers of paint on top of the print.
7 And each of those layers had to dry before they could put
8 another layer. And all this had to be done on weekends.
9 And they had to keep traffic off of it, you know, until it
10 dried, and they went through the different processes. And,
11 you know, that was basically what we were up against.

12 And our only alternative was we've got to do it this
13 way. You know, we can't -- matter of fact, they refused.
14 I mean, we tried to get them, we said, we've got, you need
15 to come and do this behind the paver.

16 Would you like to get somebody else to do it, then.
17 We ain't going to do it. You can't do it. Just won't --
18 we'd have an unacceptable job or it would, you know, just
19 physically have been impossible for them to print it, paint
20 it, let it dry, paint it again, and all this, you know, as
21 quick as we were paving it.

22 And if we tried to slow the paving process down that
23 slow to where it took, you know, four or five weeks or ten
24 weeks to do the paving, then the paving would have been, it
25 would have been the biggest patched-up mess you ever saw.

1 So we physically did the job the way it had to be done, the
2 best way that you could do it, and ended up with a good
3 product, a real nice-looking product, but we did it the way
4 it had to be done.

5 Now, previous to this job, we ran into a job up on
6 Monroe Street where we put in crosswalks with brick.
7 I don't know if you all are familiar with it, but uptown we
8 put in brick pavers across Monroe Street. Well, that job
9 called for 10 or 12 inches of asphalt. You had to dig out
10 the areas. All this had to be done at night, all right.

11 You had to start at 6:00 in the afternoon. You had
12 to be off the road by 5:00 or 6:00 the next morning. You
13 had to remove the asphalt, dig out a trench about 15 inches
14 deep, compact it, stabilize it, put in, it was either 10 or
15 12 inches of hot asphalt, then come back and put brick on
16 top of the asphalt, and then turn traffic on it at 6:00 the
17 next morning or at 7:00, whatever time that might have
18 been.

19 Well, the first night we did that, we went out and
20 did it, and we did it according to the specs. And the
21 first night we did that, we realized there ain't no way
22 this is going to work. We're putting in 10 or 12 inches of
23 hot asphalt just like the plans called for, you know, and
24 we got it in and we got density, we got a lane ready, we
25 got brick on it, and here we go putting traffic on it the

1 next morning, you know.

2 The asphalt is still hot. It took, you know, a
3 couple of, it took two or three days for that 12 inches of
4 asphalt up underneath there to ever cool down. And what
5 happened was the traffic coming over that stuff was
6 starting to move the, you know, (indicating). It wasn't,
7 it wasn't staying there because the hot asphalt underneath
8 was not cured and cold.

9 So we immediately stopped work and tried to get the
10 DOT, wrote letters and everything else, saying this isn't
11 going to work. We need to change this from asphalt to
12 quick-set concrete. You know, we can do the job, but we
13 need to change it from hot asphalt to quick-set concrete so
14 that, you know, we can pour this thing with concrete, and
15 it will cured in two or three hours. Then we can lay our
16 brick on it. And the next morning we can put traffic on
17 it. And we'll have a, you know, an acceptable job. But
18 the way we're doing it, this thing is not going to hold
19 up.

20 So anyway, our request was rejected. And we were
21 told, you know, you just do it the way the plans are. So
22 we proceeded on to do that whole job --

23 MR. SHAFER: Excuse me.

24 MR. NUTBROWN: Okay.

25 MR. MITCHELL: -- all the way up and down Monroe

1 Street just like the plans called for. And it was a
2 nightmare. For the next two or three years, that stuff
3 moved around. They put it in the newspapers, blamed it on
4 Mitchell Brothers --

5 MR. NUTBROWN: Eddie, I'm going to interrupt you,
6 because I don't really feel that that's totally pertinent
7 to what we're talking about here and --

8 MR. MITCHELL: Okay. Well, I guess what I'm saying
9 is, when this thing came up, we tried to do it the way that
10 it called for. And I'm sorry, you know, I got into that,
11 but I guess that was, what we did on this job here is we
12 did it the way it had to be done, and we did it the way,
13 the only way it could be done and ended up with something
14 that I would be proud of, DOT would be proud of, and the
15 way it should have been done.

16 MR. NUTBROWN: Okay.

17 MR. MITCHELL: I'm not going to say it's impossible
18 to have done it the way they talked about, but I've almost
19 got to believe it would have been.

20 MR. NUTBROWN: Okay. Freddie, have you got a
21 question?

22 MR. SIMMONS: If you had done it the way the specs
23 had it, you know, right behind the machine, could you have
24 done it in the two days even that way?

25 MR. MITCHELL: I don't think --

1 MR. AVITABLE: Bob said he couldn't do it.

2 MR. GWYNN: (Shaking head negatively)

3 MR. MITCHELL: I'll be glad -- we have Bob here.

4 MR. AVITABLE: We wouldn't have been able to pave it
5 the way they would have, you know, to where they could have
6 stamped it. In other words, we would have had to have
7 paved a fourth of the intersection at a time. And we would
8 have had joints, I mean, it just would have been a mess.

9 MR. NUTBROWN: Go ahead.

10 MR. GWYNN: I'm Bob Gwynn. I head up the StreetPrint
11 division for Peavy and Son. Let me just throw this out and
12 explain some of what Eddie and Tim are saying.

13 I'm assuming that all of you all are familiar with a
14 paving operation, all right? When I go in to do a
15 StreetPrint job, I use a template. I'm going to say this
16 is my template, whatever design that you all are set out to
17 use. All right.

18 First of all, we have to do our grade work -- or not
19 grade work but our layout work to see how the pattern is
20 going to lay in a particular area. Okay. Here's my
21 template. If I was to try to lay my pattern behind his
22 paving crew, for him to do his paving, he has got to use a
23 steel wheel roller to seal his asphalt.

24 If I go in there and lay my template on his asphalt
25 and he comes in with his roller, the first thing he's going

1 to do is hit my template and scoot it (indicating). When
2 that scoots, there goes your pattern. We have never -- and
3 this is a little history. Year before last I was -- well,
4 not I, we was the number one applicator in the United
5 States. We done more StreetPrint than any other
6 applicator. So I kind of feel like we know what we're
7 doing.

8 We reheat, we use the template, we do not use a
9 roller. We use a plate tamp. That way we can control our
10 template. But going back with a roller, there's no way to
11 anchor your template to keep that roller from pushing it.

12 MR. SIMMONS: Do you do all the projects you all do
13 now totally reheat?

14 MR. GWYNN: Yes, sir, always have.

15 MR. SIMMONS: For how long have you been doing it
16 that way? Because I assume originally --

17 MR. GWYNN: We've never --

18 MR. SIMMONS: You've never done it --

19 MR. GWYNN: Well, okay, let me, and I wasn't going to
20 go into this, but look at it from our standpoint, not
21 Eddie's, but our standpoint, is we are also paving
22 contractors. All right.

23 You can't stop a paving train, as I call it, to put
24 down a template. I mean, it just, it just doesn't work
25 that way. You'll have trucks sitting there. Your asphalt

1 will get cold. Because you have to let your asphalt cool
2 just to get out there and put your layout. But we've
3 always reheated.

4 MR. NUTBROWN: Okay.

5 MR. SIMMONS: The other question I had was whenever
6 you realized that you couldn't do it the way the specs had
7 it and the StreetPrint, you know, company and them had said
8 we don't do it this way, it ain't going to work or
9 whatever, I didn't see anything in what you all gave us
10 where you presented DOT with information at that time from
11 the company saying you can't do it that way.

12 Well, did you all have something back then? Because
13 you've got it now with these letters, but I didn't see
14 anything at that time saying that.

15 MR. AVITABLE: Want me to answer?

16 MR. NUTBROWN: Go ahead.

17 MR. AVITABLE: I mean, they're not, even these
18 letters, he doesn't say that you can't do that. He's just
19 saying they don't recommend it. The point he made in here,
20 one part about if they only allowed people now to reheat,
21 all the people that, you know, he would lose a lot of
22 business that way where they just don't recommend it. They
23 just don't feel like they can get as good a job.

24 And when I found out that it was all reheat,
25 originally, the guy that was in Florida, and I took him

1 over to Claude's office, who was the project engineer, and
2 tried to get them -- so I said since we're reheating, let's
3 just reheat what's there, because we had done a job several
4 years ago eliminating the paving part of it.

5 But then we realized that one of the problems was the
6 paving for the StreetPrint was in the asphalt. So we
7 didn't see how to get around that. And another thing was
8 we didn't, they didn't know if the asphalt had been down
9 too long, down several years. But he felt like putting
10 down the new asphalt, since it wasn't going behind the
11 paver, wasn't really necessary, was his point.

12 But the paving in the, the paving was linked in the
13 friction course to the StreetPrint. So there's really not
14 a separate pay item for the StreetPrint. So that kind of
15 eliminated that idea.

16 MR. MITCHELL: I don't know what written information
17 we have on that, but it was thoroughly discussed and
18 whatever. I mean, back then, as far as, I feel like we
19 probably got some letters, but I do know for a fact being
20 involved in it at that time that, you know, there was
21 extensive conversation between Peavy and Son and Mitchell
22 and DOT and the project engineers and the StreetPrint
23 people.

24 And all this was, in other words, we just didn't go
25 out there and do this. We worked it out and worked out

1 doing it on weekends and having inspectors there and the
2 whole process. And it wasn't something that just, you
3 know, we just went out and did.

4 MR. SIMMONS: The other question is with it taking
5 the 85 days or whatever -- and there being five
6 intersections, right?

7 MR. AVITABLE: (Nodding head affirmatively)

8 MR. SIMMONS: So 85 days covers about 12 weeks. So
9 that ended up two plus weekends per intersection. How did
10 you do that? I mean, how did you phase that if you were
11 just working weekends? Did you just do half of the roadway
12 or something?

13 MR. GWYNN: Okay. The way we like to do it is we
14 like to go in and do all of our stamping, get all of our
15 stamping behind us, all right? Then we come back and we
16 coat it.

17 Now, I think if you'll look back at the some of your
18 time sheets here, we would start at like 5:30, 5:00 in the
19 morning.

20 MR. SIMMONS: This was on like a Saturday morning you
21 would start?

22 MR. GWYNN: Yes. Well, that was the only time
23 I could coat was on the weekend. It takes three coats.
24 You have to let each coat dry before you put on the other
25 coat. And then the last, the third coat being the sealer,

1 all right? If you're looking at rain within 24 hours, you
2 don't want to.

3 This stuff has cement in it, my coating, just like
4 cement. In eight to ten hours it gets about 80 percent, 90
5 percent of its curing. Then it sits there for 28 days and
6 gets to 100 percent, just like concrete. All right. Now,
7 that's one.

8 All right. We used multiple colors. When I say
9 that, these intersections has two different colors. Well,
10 I paint one color. Maybe go down to the next
11 intersection. Paint the same color. Then I'd come back up
12 and let, when all of it is dry, I'd paint the other color.
13 So now you've got another time delay. You can't, you can't
14 paint over the other. You have to tape it and that, da da
15 da da da da, to keep it from pulling off. So that takes a
16 little more time.

17 MR. SIMMONS: So a lot of it is curing and drying?

18 MR. GWYNN: Yeah. It's like sitting there watching
19 paint dry. But if you turn traffic on it and it's not,
20 then you've got a mess.

21 MR. NUTBROWN: Does Mitchell Brothers have any other
22 comments? And I'll let the Department make their
23 presentation. Then we can go back and --

24 MR. NORTON: I've got one more question.

25 MR. NUTBROWN: All right.

1 MR. NORTON: How big are your templates that you're
2 using to put this stuff down?

3 MR. GWYNN: They vary. I've got some that's like so
4 wide that I use for a border (indicating). Then I've got
5 some that's like 6 feet by 12 feet or 10 by 12. It really
6 depends on the pattern design or what I'm trying to
7 accomplish as to what I use.

8 MR. NORTON: So what you're saying is that to lay out
9 this stuff on hot asphalt, you can't just set it down after
10 he gets his compaction, set it down, run a plate tamp over
11 it to kind of anchor it, and then run it with a steel wheel
12 roller?

13 MR. GWYNN: No, sir. No, sir. I wouldn't.

14 MR. NORTON: All right. Because that's the way the
15 original specs says, that you will set it, in effect, set
16 it, put a plate tamp on it. And apparently that was
17 theoretically set in enough that you could then hit it with
18 a roller and it wouldn't push it around.

19 MR. GWYNN: I've seen that roller in their
20 brochures. And it looks like everything I was looking at
21 was coming out of Europe. Now, I don't know how they do
22 things over there. But we played with a roller in our
23 shop. And it would not work. It just (indicating). It
24 would scoot. And then you -- we call them grout lines,
25 just like you're laying regular brick.

1 MR. NORTON: Uh-huh.

2 MR. GWYNN: Well, your grout lines, they'll get
3 crooked and all disordered and it just will not work.

4 MR. NUTBROWN: What is the makeup of the template
5 itself? Is it a rigid form or is it --

6 MR. GWYNN: It's a wire rope, just --

7 MR. NUTBROWN: Fastened together?

8 MR. GWYNN: Welded together. They're made in a jig.
9 And if they're supposed to be square, it's square. And
10 they're welded.

11 MR. NORTON: Like rebar? Thin?

12 MR. GWYNN: No. It's just, think of like wire rope.
13 It's flexible. You can bend it. You can roll it up. But
14 you have to have that so you can get your different pattern
15 designs. If it was just plumb rigid, then you couldn't go
16 around a tree or make a circle. I mean, we've put in
17 handicap emblems. I've got big circles. It's just --

18 MR. NUTBROWN: Go ahead.

19 MR. AVITABLE: I want to make one other comment. And
20 Bob can fill me in and tell me if I'm wrong. As far as
21 just going behind the paver with hot asphalt and putting a
22 template down and putting it with a plate tamp, these were
23 all intersections downtown with a lot of traffic.

24 And we milled out, you know, an inch or good inch of
25 asphalt and then put a good solid inch back. But it's

1 still a road. So we had to pave it just like we were
2 paving a highway. Because if we didn't, put a breakdown
3 roll on it and rubber tire on it and a back roller on it
4 and roll it, the proper way to pave something -- in other
5 words, we paved it just like we were paving any other road.

6 By the time we are done with that back roller, that
7 asphalt is probably only 150 degrees or 160 degrees. You
8 can't put, and, Bob, correct me if I'm wrong, but you can't
9 go at that point and put a plate tamp on it, a template and
10 it hardly do anything.

11 And if he did it the other way and just put the
12 template behind the asphalt, in a driveway it may be all
13 right, but, Bob, what would happen out there in about a
14 short amount of time with traffic driving on the asphalt
15 that was compacted with a plate tamp, you're going to have
16 a rutting -- I mean, an intersection especially.

17 So we had to pave the road the right way to pave,
18 just like paving any other road. So by the time we're done
19 paving it, I mean, it's just, we've got to get density all
20 through, or that road is just going to be just a rutting
21 mess. And by the time we're through with it, the asphalt,
22 you know, when you get density, it's down to 160, 150, I
23 don't see how that process would ever work on a road like
24 that. That's just my feeling, I mean.

25 MR. NUTBROWN: I have one question for the

1 Department. Did that job have a rolling straightedge
2 requirement on it?

3 MR. SHAFER: No.

4 MR. NUTBROWN: Eddie?

5 MR. MITCHELL: Mr. Nutbrown, going back to what I was
6 talking about a while ago, and I think this is relevant, on
7 the brick crosswalks that we put in up there, those had to
8 be tore out. And Bob and them replaced them with
9 StreetPrint.

10 In that case, they tore out the brick sidewalks, you
11 know, that had been moving, compacted material back in
12 there, and then paved over that, you know, with asphalt,
13 you know, and then left it there for, I mean, I remember
14 specifically looking at it, left it there for a month or
15 whatever.

16 And then about a month or so later, they came back,
17 laid it out, heated it, StreetPrinted it, and did --
18 I mean, it's not, this wasn't unusual or whatever. I mean,
19 they physically had to do the same thing up there. I mean,
20 they couldn't, you know, it's not a --

21 MR. NUTBROWN: All right. Does Mitchell Brothers
22 have any other comments they'd like to make at this time?

23 MR. MITCHELL: About any other items?

24 MR. AVITABLE: No.

25 MR. MITCHELL: Do you want to talk about any other

1 items or do you just want to stay --

2 MR. NUTBROWN: Well, let's get through that one, and
3 then we'll go back to another item. I think that's the
4 major item in the whole thing. And I think we'll get it
5 closed up, and then we'll go back to the others. Tom?

6 MR. MONTGOMERY: Okay. I'm Archie Montgomery. I
7 have the advantage on this project of not being on it
8 during construction, so I'm speaking of what I have
9 researched and what the records have documented.

10 I guess the claim was about six different, five
11 different items. The revised drawings --

12 MR. NUTBROWN: Archie, let me back up a minute.

13 MR. MONTGOMERY: Yeah.

14 MR. NUTBROWN: Being that we started with the
15 StreetPrint item, let's go through it and get the
16 StreetPrint item out of the way, and then we'll address the
17 other items.

18 MR. MONTGOMERY: Okay. The StreetPrint item, number
19 three, the spec says, the contract, StreetPrint or approved
20 equal. And that of course required the asphalt pavement to
21 be textured at these five intersections. And that's after
22 you get the density, required density. And while it's
23 still within the temperature range, you can imprint it.

24 The plan note on page, sheet five, it states that
25 contractor shall include all costs associated with

1 StreetPrint or approved equivalent StreetPrint texturing
2 and a unit price bid for asphalt concrete fiction course.
3 And he mentioned that before, that there was no extra
4 payment for or separate payment for StreetPrinting. It's
5 all in the price of asphalt, which was bid at some \$350 per
6 metric ton.

7 During the course of this, it was optional, as the
8 contract says. You could just use StreetPrint or some
9 other alternate. And of course there is a provision if you
10 want to change specifications. And that's in 8-7. But we
11 never received any requests to change the specifications,
12 which would add more time that he is now requesting.

13 It's interesting to note that MBI's, Mitchell's work
14 progress chart showed 38 days for subgrade base and surface
15 construction. I don't, didn't determine that there was
16 much subgrade base or work involved. It was mostly surface
17 construction. So 38 days was in his work progress charts
18 to accomplish this task.

19 And if you look at the daily record, he actually
20 worked 33 days. So he proposed 38 days for the surface and
21 actually used 33 days. Now, those 33 days came out of that
22 75 days, from May the 30th to 8-12, but there was about 39
23 days that the dailies did not show any work going on.

24 Something I don't understand here, all of the
25 engineer's weekly summaries show Peavy working Tuesday

1 through Friday from 5-30 to 6-2. And then from 6-5 to 6-8,
2 four days, Peavy was placing StreetPrint in both
3 instances.

4 And then we jump to the week of 6-12 to 6-15, Monday
5 through Thursday, contractor placed StreetPrint. And that
6 goes on, placing StreetPrint and started painting
7 StreetPrint only on July the 8th and placed StreetPrint
8 during July the 10th through the 12th and then painted on
9 July the 29th and July the 30th.

10 MR. NUTBROWN: Gentlemen, you'll have your turn.
11 Would you wait a minute, please.

12 MR. MONTGOMERY: And Saturday, August the 12th,
13 painted the StreetPrint. So in pulling up the new
14 specifications, I went to the Web page and pulled up sample
15 specifications for texturing asphalt pavement. And it's
16 still an alternate. You can either place it and print it
17 behind the paver. Or an alternate method, each place it
18 talks about it says alternately can be printed at a later
19 stage. And the contract allowed that. And that was the
20 option of the contractor, to use that alternate imprinting
21 method.

22 As I said before, there was no StreetPrint
23 specifications for revised installation found and nothing
24 that I found that they were even considering revised
25 StreetPrint specifications.

1 MR. NUTBROWN: Okay. Jack, do you have any questions
2 of the Department?

3 MR. NORTON: Well, I had a question for the Peavy
4 representative.

5 MR. NUTBROWN: Wait, wait, wait just a minute. Do
6 you have any questions?

7 MR. SIMMONS: Several of those days, I was trying
8 to -- you got started before I got my calender. Several of
9 those days you read, then, were during the week?

10 MR. MONTGOMERY: Yes.

11 MR. SIMMONS: Tuesday through whatever.

12 MR. MONTGOMERY: Tuesday through Friday. They're
13 listed on the dailies.

14 MR. SIMMONS: And that was StreetPrinting done?

15 MR. MONTGOMERY: Placed.

16 MR. SIMMONS: Placed.

17 MR. MONTGOMERY: Correct.

18 MR. SIMMONS: So it wasn't just weekend work?

19 MR. MONTGOMERY: Not according to the record.

20 MR. SHAFER: The painting was done during the
21 weekend.

22 MR. NORTON: That was my question. It was only
23 painting that was done during the weekends?

24 MR. SHAFER: Evidently.

25 MR. GWYNN: During the week, they would let us close

1 a lane. We'd set up a lane closure, one lane. Went all
2 the way through the intersection. I'd stamp both sides of
3 the intersection. Then we would switch traffic, flip it
4 over to where we just stamped, close another lane.

5 But I did close lanes during the week to stamp. But
6 I couldn't, you can't coat like that. And the reason you
7 can't coat is if I was to come in here and coat this lane,
8 let it sit there and dry and then come back and coat this
9 lane and let it sit there before you could put traffic on
10 it, you'll have a discoloration. He wanted me, excuse me,
11 they wanted me to do it during the week. And I wouldn't
12 because I couldn't.

13 Now, this may not mean a whole lot, but going back to
14 what you were saying a while ago about the technique, we
15 done some stamping last year in Monticello on a DOT job for
16 CW Roberts Contracting.

17 Now, going through the heart of Monticello, there is
18 no way in the world, and this is just another example, that
19 I could have got in behind his paving train. We come back
20 at a later date after the paving train had been gone,
21 reheated, stamped, coated, and that was it. Just another
22 example.

23 MR. NORTON: When you painted the intersections, you
24 painted the whole intersection at one time is what you're
25 telling us?

1 MR. GWYNN: Yes, sir. Now, there was -- because on
2 the weekend, they would let us close the whole
3 intersection. But, now, here goes back to what I said
4 earlier, the time, it may take me a whole weekend to do one
5 intersection because of the two colors.

6 But I may have closed two intersections at one time.
7 I didn't have them all closed, naturally, but there at the
8 Supreme Court and then the next one, I may have closed both
9 of those. We'd paint color up here, paint that same color,
10 go down and paint that color and then come back.

11 The reason you have to do things like that, going
12 back, this stuff has cement in it. If you look at the time
13 of the year that we was coating, it was extremely hot. We
14 put ice, I'd take bags of ice and put it down in the
15 coating to keep this coating from setting up. That's why
16 we'd start so early, where we can get it down, let Mother
17 Nature have it, because it takes me, I want eight to nine
18 hours of the road closed before opening for traffic.

19 MR. NUTBROWN: Okay. Freddie, have you got any other
20 questions, comments?

21 MR. SIMMONS: No, nothing yet.

22 MR. NUTBROWN: Have we covered the item regarding the
23 streetscape sufficiently?

24 MR. SHAFER: I'd like to make one comment. The
25 records show that the contractor placed StreetPrint and

1 placed it all before he started painting. And it would
2 seem that he could have painted some of the weekends after
3 he'd done an intersection. He could paint it that weekend
4 and then go do that and still keep placing it but come back
5 and paint it. It looks like he did all the work before he
6 started any painting at all.

7 MR. NUTBROWN: All right.

8 MR. MITCHELL: I'd like to comment about that.

9 MR. NUTBROWN: Go ahead, Eddie.

10 MR. MITCHELL: There was a comment made about
11 something about the schedules saying 38 days for subgrade
12 or whatever. I just want to make it clear that that
13 doesn't have anything at all to do with StreetPrint.
14 StreetPrint was strictly just milling asphalt, putting back
15 new asphalt, and then putting down the StreetPrint. The
16 subgrade would have had to do with the sidewalks and the
17 headwalls and other work not having anything to do with
18 StreetPrint.

19 MR. NUTBROWN: Okay. Jack, have you got any
20 questions?

21 MR. NORTON: No, I had all of mine answered.

22 MR. SIMMONS: The only thing was that assuming that
23 it did take the whole 85 days, and I remember going in and
24 out of that some while it was going on, but your
25 maintenance of traffic, I guess you had all the, at least

1 all the side street signing and everything stayed up that
2 whole time, I guess, didn't it?

3 MR. AVITABLE: Just during the weekend where we were
4 working.

5 MR. SIMMONS: Because you were just scattered where
6 you worked up and down that five blocks or so.

7 MR. AVITABLE: You mean like "lane closed ahead" or
8 whatever?

9 MR. SIMMONS: Yeah. I mean, you had stuff out there,
10 I guess, that whole time before you got through fully, I
11 guess, didn't you?

12 MR. MITCHELL: The permanent stuff would have been
13 there. And the temporary stuff we would have took on and
14 off --

15 MR. SIMMONS: Just moved it --

16 MR. MITCHELL: -- as they were working.

17 MR. SIMMONS: -- from work site to work site.

18 MR. MITCHELL: And on the days they were working or
19 could work and whatever. And then there would be certain
20 items that would be permanent that would stay there, you
21 know, throughout the job.

22 MR. AVITABLE: We also had deputies out there when we
23 closed the intersections, just for the time we had them
24 closed.

25 MR. SIMMONS: Did you that do that mostly every time

1 when you was out there, you had some off-duty officers?

2 MR. AVITABLE: I think so, didn't we, Bob?

3 MR. GWYNN: (Indicating)

4 MR. AVITABLE: Yeah, two every time.

5 MR. NUTBROWN: Okay. We'll back up and let's discuss
6 item one, which was the drawing revisions. It's my
7 understanding that the Department, on April 14th of 2000,
8 agreed to 17 days. And how was this presented, Tom?

9 MR. MONTGOMERY: Exhibit 1-5. Here you go.

10 MR. MITCHELL: Mr. Nutbrown?

11 MR. NUTBROWN: Yeah?

12 MR. MITCHELL: Do you feel like for any reason we
13 might need to have Bob?

14 MR. NUTBROWN: I -- Jack, do you think that Bob needs
15 to stay?

16 MR. NORTON: No.

17 MR. NUTBROWN: I think we've pretty well covered that
18 item, Eddie.

19 MR. MITCHELL: I'm sure we could give you a call if
20 we need to or whatever.

21 MR. NUTBROWN: No, I see no reason why you need --
22 you can be excused.

23 MR. GWYNN: Thank you.

24 MR. MITCHELL: Appreciate it.

25 MR. GWYNN: I hope I was helpful. If you have any

1 questions, don't hesitate to call me.

2 MR. MITCHELL: Thank you.

3 (Whereupon, Mr. Gwynn exited the room.)

4 (Discussion off the record)

5 MR. NUTBROWN: Tom, in reviewing your recap of the
6 thing, you agreed with the 26 days that was for the planned
7 revisions?

8 MR. SHAFER: We agreed with, yes, uh-huh.

9 MR. NUTBROWN: And you agreed with the two days for
10 the temporary sidewalk?

11 MR. SHAFER: Yes, we did. Yes, sir.

12 MR. NUTBROWN: Okay.

13 MR. SIMMONS: Benches.

14 MR. NUTBROWN: I have a question on the benches.
15 There was 90 days of procurement time. Mr. Mitchell, can
16 you tell me why we waited until we were 60 days into the
17 job before we even looked into the benches?

18 MR. MITCHELL: Well, I'm sure we were looking into
19 them. Why don't you go ahead and tell him.

20 MR. AVITABLE: I don't think they put anything in
21 writing to the Department until, I think there was a letter
22 on March the 9th. But it was my understanding, I wasn't
23 trying to procure the benches, but it was my understanding
24 they had a, Kathy may know something about it, that they
25 were verbally calling the bench supplier well before that

1 trying to -- and finally they realized that there was a
2 serious problem, that the model number shown in the plans
3 was never even manufactured by the one they listed. And
4 that was when they --

5 MR. NUTBROWN: Okay.

6 MR. AVITABLE: That's all I know about it. I don't
7 think they thought it was going to be that big of a problem
8 where they needed to be ordering benches, you know, 120
9 days or 180 days before they were going to need them,
10 because that would be the last thing that went in, the
11 benches.

12 So I don't think they thought they were going to need
13 to order them. It would have been what, 90 days --

14 MR. NUTBROWN: The way I see it, the ordering was up
15 to Mitchell Brothers, correct?

16 MR. AVITABLE: Right, right. It's just the problem
17 came when what was stated in the plans as being the bench
18 that they wanted was never even manufactured by the
19 supplier. And like I said, since that was the last thing
20 that went in, I think the project manager wasn't
21 anticipating ordering them six months ahead of when we
22 needed them, since there were only three benches, three or
23 four benches.

24 MR. MITCHELL: Kathy, I just asked her, and she said
25 Jerry Burris was the person that was handling that and that

1 he was, you know, calling about this early on. But I guess
2 until it got to the point that they just saw that this was
3 something they couldn't get it or whatever is when it
4 really become a problem.

5 MR. NUTBROWN: Well, it seems like to me it would
6 have taken one phone call to call out there and say, and
7 they would have told you right then they didn't even
8 manufacture that type of bench.

9 MR. AVITABLE: Right.

10 MR. MITCHELL: Sometimes that's the case. And then
11 other times that's not the case. But, I mean, I follow
12 what you're saying.

13 MR. NUTBROWN: A purchase order telling them I want
14 four of this model or six of this model bench, to me,
15 should have come out a lot sooner than 60 days into the
16 job.

17 MR. MITCHELL: Being in construction and having seen
18 some things on other jobs with other materials, sometimes,
19 sometimes it gets ridiculous.

20 MR. NUTBROWN: Tom, on the benches?

21 MR. SHAFER: Well, our thought is that if they had
22 ordered them in a timely fashion and found out that they
23 weren't available, then we would have been able to
24 mitigate. But we didn't even know it. I think that we
25 finally gave them some time for the delivery time. And I

1 think, Archie, what else did we give them?

2 MR. MONTGOMERY: Yeah, there was a mention of a delay
3 for our approval of the substitute benches. And we
4 considered that along with the delivery time. And those
5 two items we considered. But, as you stated, there's that
6 long lapse between when the project time started on January
7 the 15th and then --

8 MR. NUTBROWN: From what I see here --

9 MR. MONTGOMERY: First ordered on the February 25 is
10 the first time we can see --

11 MR. NUTBROWN: I see in your recap, Tom, that you
12 have the same number of days --

13 MR. MONTGOMERY: That was requested.

14 MR. NUTBROWN: -- that was requested by the
15 contractor.

16 MR. MONTGOMERY: That's true, that's true.

17 MR. SHAFER: Yes, we do.

18 MR. NUTBROWN: Okay. I don't think there's any
19 reason to beat that horse to death anymore. The only other
20 thing left is the change or the start date over a weekend
21 during the Martin Luther King holiday. And I don't think
22 there's a lot we can talk about there.

23 I think the main thing we need to do is, I think we
24 can more or less bring the hearing to a close. I don't
25 think that there's a lot that we need to beat to death at

1 this point. We've covered all the items in there.

2 Eddie, I'll ask your folks, do you have anything that
3 you want to add to what we've already discussed regarding
4 any of the items that you had in your original claim?

5 (Discussion off the record)

6 MR. AVITABLE: Could I ask a question?

7 MR. NUTBROWN: Uh-huh.

8 MR. AVITABLE: There are days that I think we're in
9 agreement on both sides. But there were other days that
10 were affected by that, such as weather days and so forth.
11 Would those automatically get added, or is that something
12 we also have to talk about later?

13 MR. NUTBROWN: Well, we're going strictly by what's
14 in your original letter of claim. And you've given us an
15 outline in your claim as to what you were requesting and
16 what you're bringing to the board.

17 MR. AVITABLE: Right. I guess my point is if we look
18 at the, originally there was 96 days granted and the days
19 charged was 255, leaving 159. Then of the 87 days that --
20 I guess what I'm saying is prior to the StreetPrint
21 discussion, that the Department and Mitchell Brothers were
22 in agreement on was 87 days in the package.

23 And during those 87 days, if you add those to the
24 original contract days, we've got two weather days, a
25 weekend for FSU graduation, and other things. My point is

1 it would take, you'd have another 12 days that would be
2 legitimate weather days and so forth that could be
3 reasonably deducted from that.

4 MR. MITCHELL: I guess what he's saying, should we
5 discuss -- and we're only looking at an additional 10 or 12
6 days.

7 MR. AVITABLE: That it would impact.

8 MR. MITCHELL: And I think that might have been
9 brought up earlier about the FSU graduation, blocking of
10 the intersection. The inspectors and the crews agreed not
11 to work that weekend because of all the traffic and some
12 things like that that I guess we didn't ask for days, or I
13 guess it was verbally agreed upon then, but in the end we
14 didn't get them. We were charged those days instead of
15 getting credit for them.

16 MR. AVITABLE: If we were in agreement on those days,
17 all these days should be also included, which, I mean,
18 we're only talking about, at the end, we're only talking
19 about a 60-day difference is my point instead of --

20 MR. NUTBROWN: Okay.

21 MR. SHAFER: I'm going to have to think on this. If
22 there were weather days, if there were weather days, I
23 guess --

24 MR. NUTBROWN: No, I think he's, one of the things
25 he's talking about, I'm not sure about weather days, but

1 one of the things he's bringing up is the work stoppage as
2 far as graduation is concerned.

3 MR. SHAFER: That all should have been brought up,
4 then, I think, in his presentation, so we could have
5 studied it at the time.

6 MR. NUTBROWN: I know that they're in the
7 correspondence in the file.

8 MR. NORTON: It was 3-6, I believe, in yours, Tom,
9 I think. Is that the letter you're talking about? Do you
10 have that there? It's a March 15th, 2001, letter where
11 you've outlined, writing Mr. Brown.

12 MR. AVITABLE: Right. That's right. That letter had
13 a lot of that information in it.

14 MR. NORTON: You've got total additional contract
15 time requested is as follows.

16 MR. MITCHELL: Where is that and I'll let Tim look at
17 it?

18 MR. NORTON: 3-6. And that's in the State's rebuttal
19 that it's 3-6. It's in yours too. I just don't know which
20 one.

21 MR. AVITABLE: That's in their rebuttal.

22 MR. MITCHELL: Okay, sir.

23 MR. AVITABLE: I guess what I'm saying is that with
24 the days that we're in agreement on, or saying agreement,
25 by the time you add up to the contract days, instead of

1 leaving 72 days, you have two weather days, the weekend for
2 FSU graduation, a weekend preceding July 4th and the July
3 4th holiday, Memorial Day, and the weekend preceding, and a
4 Sunday which affected Peavy's work on the StreetPrint,
5 which would bring it down to 62 days.

6 And all these, I'd just like to say, are normally
7 days that are given when contract time is going on, such as
8 Memorial Day and July 4th.

9 MR. SIMMONS: Is that time that you had already asked
10 the DOT for and they didn't grant it?

11 MR. AVITABLE: Well, we weren't, at that time we were
12 out of contract time. So what I'm saying is now if you add
13 these days that we're agreement on to the original contract
14 time, these days would all come into being during contract
15 time.

16 MR. SIMMONS: It occurred during the same time
17 period.

18 MR. AVITABLE: Right, so.

19 MR. SHAFER: Well, that's, yeah, that was the reason
20 that they wouldn't have been granted is because they were
21 out of contract time. Now, if this extends contract
22 time --

23 MR. MONTGOMERY: I did go back and look at all the
24 dailies for weather days and that the number of days that
25 we offered, there were two weather days that would have

1 extended only two days.

2 MR. AVITABLE: Well, I'm in agreement with that. But
3 I'm listing the other normal holidays such as July 4th and
4 Memorial Day weekend, Memorial Day, and the FSU graduation,
5 which we suspended work. And I was told by the project
6 engineer that if we suspended work, which you're not aware
7 of that because you weren't on the job --

8 MR. MONTGOMERY: I wasn't, no.

9 MR. AVITABLE: He told me that if we were out of time
10 but we did suspend work due to FSU graduation, that's when
11 we were closing down the intersections, that he would give
12 us the time for that weekend. So those are the days that
13 I'm asking for. And there's no way --

14 UNIDENTIFIED SPEAKER: Is that in writing?

15 MR. AVITABLE: -- you could have knowledge of that,
16 because, like I said, that was something he told me on the
17 job.

18 MR. NUTBROWN: There's a letter in the file that was
19 sent to the department on March 15th.

20 MR. SHAFER: Right, the Bill Hodge letter.

21 MR. NUTBROWN: And according to this, it was received
22 from Tallahassee Construction on March 21st.

23 MR. SHAFER: Right.

24 MR. NUTBROWN: It outlines that whole thing and
25 recaps that whole program.

1 MR. SIMMONS: Where in that letter, which of these
2 days is it that you would pick up those holidays that he's
3 talking about? That's not in that list there.

4 MR. NUTBROWN: And I don't see the holidays in this
5 list.

6 MR. SHAFER: It isn't.

7 MR. MITCHELL: July 4th is one of them, I know.

8 MR. AVITABLE: Saturday, April 29, was the FSU --

9 MR. NUTBROWN: I see the FSU graduation in here for
10 one day.

11 MR. MITCHELL: The 4th is three days.

12 MR. NUTBROWN: Weather days not awarded. You have
13 three and they say two.

14 MR. SIMMONS: And you all agreed with the two.

15 MR. NUTBROWN: But I don't see anything in there
16 about the other days relating to Memorial Day or in your
17 letter to the Department.

18 MR. AVITABLE: I guess my point is I'm just asking
19 for the days that would normally, in other words, if you go
20 to special provisions on any job, July 4th is generally
21 accepted as a holiday that they give time for. And I'm
22 just saying I'd like to request that we get those days if
23 we're in agreement on the additional time.

24 MR. NORTON: I think what he's saying is if the
25 contract has been extended past those days, then you would

1 normally pick them up as a contract extension, and those
2 are the days he's asking for.

3 MR. SHAFER: I understand that. If those 87 days go
4 past those dates, then those dates would --

5 MR. NORTON: Would automatically extend the contract.

6 MR. SHAFER: I would think so.

7 MR. SIMMONS: When was the contract suspended? What
8 was the date? I know it's here somewhere. I don't know
9 where it's at.

10 MR. MONTGOMERY: What was your question?

11 MR. SIMMONS: When was the contract suspended as far
12 as you all were concerned? Then you'll add 87 days to
13 that, what you've already agreed to.

14 MR. NUTBROWN: It would have been March sometime,
15 wouldn't it? The final original contract date. It should
16 be in the front of the recap.

17 MR. NORTON: It's more like April something.

18 MR. NUTBROWN: It's in the letter.

19 MR. NORTON: Here is this.

20 MR. NUTBROWN: Yeah. Okay. That's what I was
21 looking for.

22 MR. MONTGOMERY: 8-12? Is that --

23 MR. SHAFER: What is it?

24 MR. NUTBROWN: But there's another sheet.

25 MR. NORTON: Yeah, there's another sheet that tells.

1 MR. NUTBROWN: No, go back.

2 MR. SIMMONS: Date work completed? 9-25.

3 MR. NORTON: That's when it was completed but there's

4 a --

5 MR. NUTBROWN: There's another sheet. Go one more.

6 No.

7 MR. SHAFER: There ought to be a --

8 MR. SIMMONS: Final acceptance. It says final

9 acceptance, September 25th.

10 MR. NUTBROWN: Yeah, but there's another one when it

11 says first day of construction and the --

12 MR. NORTON: Started on January 18th, 2000, and goes

13 for 96 days is what it does.

14 MR. SIMMONS: Started January the 15th, right?

15 MR. MONTGOMERY: January the 15th, correct.

16 MR. SIMMONS: It goes 96 days.

17 MR. NUTBROWN: That's in April sometime.

18 MR. NORTON: April 13th or 14th.

19 MR. SIMMONS: How many days?

20 MR. NORTON: Ninety-six.

21 MR. SIMMONS: April the 19th if you start with the

22 15th.

23 MR. NORTON: No, start with the 18th.

24 MR. NUTBROWN: No, 15th.

25 MR. NORTON: Date on which work began, January 18th.

1 MR. MONTGOMERY: Time started on the 15th.

2 MR. SIMMONS: That's that three-day Martin Luther
3 King.

4 MR. NORTON: Okay. That's fine. That's where
5 I missed.

6 MR. SIMMONS: April the 19th. And then how many?
7 Eighty-seven days from that?

8 MR. NORTON: Okay. I agree with you.

9 MR. SIMMONS: Eighty-seven days would be July the
10 15th, which would have took you through July the 4th and
11 Memorial Day.

12 MR. SHAFER: And FSU graduation.

13 MR. NUTBROWN: And FSU graduation.

14 MR. SIMMONS: So how many days is all that? Two days
15 per time period?

16 MR. NUTBROWN: Two days or three days on a week?

17 MR. AVITABLE: Monday was Memorial Day. And usually
18 we request the weekend off of that, so, yeah, it's three is
19 generally what we've requested.

20 MR. SIMMONS: Three days for Memorial Day, two days
21 for July 4th --

22 MR. NUTBROWN: Archie, I see you looking in there.
23 Is there anything in the contract that specifies what
24 holidays or --

25 MR. MONTGOMERY: I believe it does. That's what I'm

1 looking for. If not, the standard specs are there. I'll
2 look here.

3 MR. SHAFER: Well, whatever days they are, I would
4 agree that they would probably be --

5 MR. SIMMONS: Well, if you've got three for Memorial
6 Day weekend, two for July the 4th weekend, and two for the
7 graduation, that's seven. And then the two weather days is
8 nine. And what else was there?

9 MR. AVITABLE: July 4 was on a Tuesday.

10 MR. SHAFER: So that would only be one day.

11 MR. AVITABLE: We didn't work that Monday or Tuesday
12 for that.

13 MR. SHAFER: Well, if --

14 MR. AVITABLE: I don't know how the spec -- it
15 depends on when the holiday falls. Sometimes it gives the
16 weekend, sometimes not.

17 MR. SHAFER: I think in the normal conditions, if you
18 would choose not to work on -- if it fell on Tuesday and
19 you chose not to work on Monday, then that was by your
20 choice. But the Tuesday you'd get.

21 MR. SIMMONS: Well, that would be eight days, then.

22 MR. NUTBROWN: July 23rd.

23 MR. AVITABLE: And then July 23rd was a Sunday, and
24 we got a weather day on the dailies for that, so that put
25 us into --

1 MR. SIMMONS: That's the third weather day, then?

2 MR. AVITABLE: Right, that was the third weather day.

3 MR. SIMMONS: So that's nine days those days.

4 MR. AVITABLE: Got us into that third weather day.

5 MR. NUTBROWN: So it's the 24th.

6 MR. AVITABLE: And that would be all of them.

7 (Discussion off the record)

8 MR. MONTGOMERY: Yeah, 864 lists holidays.

9 MR. NUTBROWN: It does list them?

10 MR. MONTGOMERY: Yeah.

11 MR. NUTBROWN: But does it -- you know, in some cases
12 they make now, it's always on a, where you're going
13 calender days, it's always do they allow the three days
14 over the weekend? Because in some cases you're required to
15 shut down as of like noon Friday.

16 MR. MONTGOMERY: Yeah, it lists those days. It says
17 contract time will be charged during these holiday periods
18 regardless of whether or not the contractor's operations
19 have been suspended.

20 MR. SHAFER: Okay. Then that modifies the spec.

21 MR. MONTGOMERY: Modifies that, yes.

22 MR. SHAFER: It says, okay, what they're saying is
23 that that time is calculated into the total time for the
24 job.

25 MR. NUTBROWN: Yeah, but we've gone by the total time

1 for the job at this time. Total time was 96 days. We're
2 beyond that.

3 MR. SHAFER: What do you say to that, Archie?

4 MR. SIMMONS: So it looks like at 96 days compared to
5 100, what was the number you're at now?

6 MR. AVITABLE: Eighty-even.

7 MR. NORTON: Well, 96 and 87 plus some.

8 MR. NUTBROWN: Plus eight.

9 MR. AVITABLE: Plus whatever days.

10 MR. NORTON: Plus eight or nine.

11 MR. NUTBROWN: So you've got 191 days.

12 MR. NORTON: You came up with what? Nine, Freddie?

13 MR. SIMMONS: Yeah.

14 MR. NORTON: One hundred and ninety-two days.

15 MR. NUTBROWN: Mr. Mitchell, do you have any other
16 things to add to your presentation?

17 MR. MITCHELL: Mr. Chairman, I think we'll just, I
18 think we'll rest at this point and basically, you know,
19 just make the statement that I think Tim and the people
20 working on the job, that we tried to do it and do a good
21 job. I think we're proud of the job.

22 We stayed on the job the whole time. We never left
23 the job and, you know, just weren't out there working. We
24 were always there. We worked with DOT when the legislature
25 came in. I know we only got two days for that. In my

1 opinion, we should have gotten a lot more, where we
2 basically stopped working on sidewalks and things and tore
3 stuff out and put it back temporarily.

4 I believe the DOT is well satisfied with the job.
5 I certainly think they should be proud of it. And I think
6 we'll just, you know, I hope we can get the time that we
7 need for the StreetPrint and the other things so that, you
8 know, we don't get hurt too bad on this thing.

9 Like I said, I just want to say that I feel like we
10 did what we had to do out there, and we didn't never leave
11 the job. We were out there trying to get the job done and
12 do it right. And I'll just leave that. Have you got any
13 comments, Tim?

14 MR. AVITABLE: (Shaking head negatively)

15 MR. NUTBROWN: Mr. Shafer, do you have any other
16 comments?

17 MR. SHAFER: The department is not unhappy with the
18 final product.

19 MR. NUTBROWN: Okay. Mr. Simmons, do you have any
20 further questions of either party?

21 MR. SIMMONS: Just let me, I want to see that holiday
22 (examining document). No, I don't have any questions. I'm
23 just looking at this.

24 MR. NUTBROWN: Okay. Mr. Norton, do you have any
25 other questions of either party?

1 MR. NORTON: No questions.

2 THE COURT: Okay. The hearing is hereby closed. The
3 board will meet immediately following this and try to
4 deliberate. And once we get the transcript from the
5 hearing, it will be about six weeks. And we'll try to
6 promptly get the order out. And with that, we're done.
7 (Whereupon, the proceedings were concluded at 10:28 p.m.)

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CERTIFICATE OF REPORTER

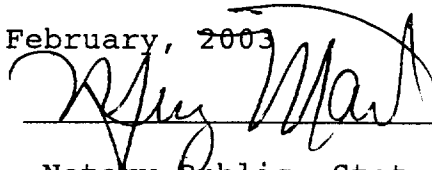
STATE OF FLORIDA)

COUNTY OF LEON)

I, MINDY MARTIN, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 1th day of February, 2003



Notary Public, State of Florida



Mindy Martin
MY COMMISSION # CC981578 EXPIRES
December 3, 2004
BONDED THRU TROY FAIR INSURANCE, INC.